

Remarks

In view of the above amendments and the following remarks, favorable reconsideration of the outstanding office action is respectfully requested.

Claims 10, 12-17, and 19-26 remain in this application. Claims 1-9 have been previously withdrawn from consideration. Claims 11 and 18 have been previously cancelled.

1. Continuing Prosecution

The Examiner is thanked for the indication that Applicant's submission of 3-11-03 has been entered.

2. Comments on Examiner's Statements on the Record

The Examiner has now, at least three times (in papers 10, 12, and 15), made statements on the record concerning what a potential infringer might do to avoid the claims in the present application. Respectfully, it is Applicant's Attorney's position that such statements by Examiner are improper. The province of the Examiner is to review the pending claims against the prior art and render a reasoned opinion as to whether the claims are patentable. Examiner is reminded that the Courts determine issues of direct infringement and infringement under the Doctrine of Equivalents, and that Applicant's and the Courts are not, in any way, bound by Examiner's statements. Applicants are duly prejudiced by such statements and Applicant's Attorney hereby request Examiner's compliance in refraining from making such statements on the record.

3. § 112, Second Paragraph Rejections

The Examiner has rejected claims 10, 12-17 and 19-22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant's regard as the invention. The Examiner states that "there is no evidence or explanation as to how one of ordinary skill would interpret the term "temperature profile."

Respectfully, the 112, second paragraph claim rejection is improper. Examiner is reminded that the requirement for definiteness under 112, second paragraph is whether the claim meets the threshold requirements of clarity and precision with a reasonable degree of particularity and distinctness (MPEP 2173.02). Definiteness must not be analyzed in a vacuum, but in light of:

- a) the content of the particular application,
- b) the teachings of the prior art, and
- c) the claim interpretation that would be given by one of ordinary skill in the art.

In particular, the term “temperature profile,” when used in the context of a draw furnace, is well understood by a person of ordinary skill in the art. It refers to the temperature distribution along the length of the draw furnace. In particular, in a draw furnace, it is the profile in the area of the draw root, i.e., the so-called “hot zone” that is important, as this is the portion that causes the tip to soften such that optical fiber may be drawn therefrom.

When reviewing the content of the present application, it is clear what is meant by “temperature profile.” For example, in the present specification, the problem in the prior art is that when pregobbing is not preformed, draw time is substantially increased (See Page 2, lines 7-14). Thus, in accordance with the invention, offline pre-gobbing is employed to pre-optimize the preform’s tip geometry prior to insertion into the draw furnace (Page 2, lines 18-21). In addition, it is made clear that it is the profile “adjacent to the tip” that is substantially identical in both the pregobbing and draw furnaces (See Page 6, lines 32-35); it is the so-called hot zone of the profile that causes the tip of the appropriate geometry to be formed (See Page 7, lines 31-36, See also Page 8, lines 22-24). From the specification, it is clear that the temperature profile is over the “hot zone.”

Additionally, persons of ordinary skill in the art recognize what is meant by a temperature profile in a furnace. In particular, it is the temperature distribution over a relevant length zone in the furnace. Examiner is directed to WO 01/49617 as evidence of how a person of ordinary skill in the art would define a temperature profile (See Fig. 2 and Fig. 3A).

Accordingly, in claims 10, 13, 14, 17, 20 and 21, as amended, it is made clear that it is the “hot zone” in each of the respective pregobbing and draw furnaces that are substantially identical. Therefore, it is believed that the 112, second paragraph rejection is overcome.

4. Provisional Obviousness Type Double Patenting

Claims 10, 13-17, 19 and 21-26 are rejected under the judicially created doctrine of obviousness type double patenting over claim 26 of 09/522,220. Applicants submit herewith a Terminal Disclaimer in compliance with 37 CFR 1.321 to overcome the provisional obviousness type double patenting rejection. Accordingly, it is believed that the filing of the Terminal Disclaimer overcomes the obviousness type double patenting rejection.

5. Conclusion

Based upon the above amendments, remarks, and papers of record, Applicant believes the pending claims of the above-captioned application are in allowable form and patentable over the prior art of record. Applicant respectfully requests reconsideration of the pending claims 10, 12-17 and 19-26 and a prompt Notice of Allowance thereon.

Applicant believes that no extension of time is necessary to make this Response timely. Should Applicant be in error, Applicant respectfully requests that the Office grant such time extension pursuant to 37 C.F.R. § 1.136(a) as necessary to make this Reply timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension to the deposit account of the undersigned firm of attorneys, Deposit Account 03-3325.

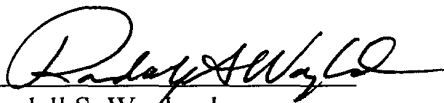
Please direct any questions or comments to Randall S. Wayland at 607-974-0463.

Respectfully submitted,

CORNING INCORPORATED

Date:

6/30/03



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